

FACTS

Taxpayer, a husband and wife, operate rental properties that were damaged in Year2 as a result of Disaster. The President of the United States determined that the damage caused by Disaster warranted assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. On Date2, Taxpayer contacted Accountant to prepare an income tax return for Year2. At the time, Taxpayer did not have complete information, such as loss verification reports from the Small Business Administration Disaster Processing Unit, to file the income tax return for Year2 and filed an extension for the Year2 income tax return.

Accountant overlooked the deadline (Date3) to report Taxpayer's loss from Disaster on a Year1 amended tax return. Accountant mistakenly believed that an exception to the deadline to elect to report a casualty loss attributable to a federally declared disaster in the immediately preceding year applied for losses resulting from Disaster, and applied the exception to Taxpayer's loss from Disaster. As a result, Taxpayer's amended income tax return for Year1 and original income tax return for Year2 were filed on Date4. Taxpayer claimed the Year2 casualty loss on the Year1 amended tax return to ease some of the financial obligations associated with restoring the damaged properties.

Taxpayer received a notice from the Internal Revenue Service disallowing the claim for refund for the Year1 amended tax return because it was received after the Date3 deadline for making an election to claim a Year2 casualty loss for Disaster on a Year1 income tax return. The taxpayer then asked the Appeals Office of the Internal Revenue Service for reconsideration of the claim disallowance and the Appeals Office denied the claim.

LAW

Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 165(i) provides that a taxpayer may elect to take into account any loss occurring in a disaster area and attributable to a federally declared disaster in the taxable year immediately preceding the taxable year in which the disaster occurred.

Section 1.165-11(e) of the Income Tax Regulations provides that the election to claim a deduction with respect to a disaster loss must be made on or before the later of (1) the due date for filing the income tax return (determined without regard to any extension of time granted the taxpayer for filing such return) for the taxable year in which the disaster actually occurred, or (2) the due date for filing the income tax return (determined with regard to any extension of time granted the taxpayer for filing such

return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time to make a regulatory election for requests that do not meet the requirements of § 301.9100-2. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H and I. Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the government. Section 301.9100-3(a).

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer’s control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty was or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences and chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the

government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Taxpayer's election is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in § 1.165-11(e). Therefore, Taxpayer's request is analyzed under the requirements of § 301.9100-3.

Taxpayer provided information and representations to establish that Taxpayer satisfies the requirements of § 301.9100-3. The information and representations made by Taxpayer and Accountant establish that Taxpayer acted reasonably and in good faith. These representations include: (a) Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the request for relief and (b) Taxpayer is not using hindsight in requesting relief and none of the specific facts have changed since the due date for making the election that make the election advantageous.

Furthermore, granting an extension will not prejudice the interests of the Government. Taxpayer represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Also, the taxable year in which the regulatory election should have been made is not closed by the period of limitations on assessment.

Accordingly, Taxpayer is granted an extension of time to make the election available under § 1.165-11 for the Year1 disaster loss. The extension of time shall be for a period of 45 days from the date of this ruling.

This ruling is limited to the making of the described election. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of the subject loss transaction under the provisions of any other sections of the Code or regulations that may be applicable hereto.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to the amended tax return for the taxable year in which the described disaster loss will be taken into account. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,

Norma C. Rotunno
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Income Tax & Accounting)